

SENT VIA EMAIL

July 11, 2014

Gregg McLean Adam
Carroll, Burdick & McDonough LLP
44 Montgomery Street Suite 400
San Francisco, CA 94104-4606

RE: Demand for Arbitration- Municipal Code Section 3.04.490

Dear Gregg:

I am in receipt of your letter dated July 9, 2014, in which you filed a demand for arbitration over Municipal Code Section 3.04.490, which states, in summary, that if a sworn employee does not qualify for a disability retirement under the new definition, the City will offer them a position in another classification.

In your letter, you indicate that you are demanding arbitration due to the City's lack of response to your grievance dated June 3, 2014. On the contrary, the City responded to your grievance in a letter dated June 4, 2014 (enclosed).

Our response stated that although the City does not believe offering an employee a position is a mandatory subject of bargaining and therefore, not grievable, we were willing to hold a Step III grievance hearing to discuss the POA's concerns with the City engaging in the interactive process and offering an employee a job. We asked the POA to provide us some dates and times when you would be available, but we did not receive a response.

Per the grievance procedures of the MOA, we would like to meet with the POA so that we can understand why the POA believes the City is violating the MOA. Please give us 2-3 alternate dates and times when you are available to meet to hold the Step III grievance hearing.

Sincerely,



Alex Gurza
Deputy City Manager

c: Ed Shikada, City Manager
Rick Doyle, City Attorney
Jennifer Schembri, Deputy Director of Employee Relations
Charles Sakai, Renne, Sloan, Holtzman and Sakai
Jim Unland, President of POA
John Robb, Vice President of POA

Enclosure

Schembri, Jennifer

From: Cordova, Elsa on behalf of Gurza, Alex
Sent: Wednesday, June 04, 2014 3:51 PM
To: gadam@cbmlaw.com
Cc: Schembri, Jennifer; Unland, Jim; John Robb (vp@sjpoa.com); cfo@sjpoa.com
Subject: Letter RE SJPOA's Step 3 Grievance - Municipal Code Section 3.04.490
Attachments: Letter RE SJPOA Step 3 Grievance - Municipal Code Section 3.04.490 dated 6.4.2014.pdf

Hi--

Please see the attached letter.

Thanks,
--Alex

Alex Gurza
Deputy City Manager
City of San José
200 E. Santa Clara Street
San José, CA 95113-1905
Phone: (408) 535-8155 | Fax: (408) 292-6436
alex.gurza@sanjoseca.gov | www.sanjoseca.gov

SENT VIA EMAIL

June 4, 2014

Gregg McLean Adam
Carroll, Burdick & McDonough LLP
44 Montgomery Street
Suite 400
San Francisco, CA 94104-4606

RE: SJPOA's Step 3 Grievance- Municipal Code Section 3.04.490

Dear Gregg:

We are in receipt of your letter dated June 3, 2014, in which the POA filed a grievance over the City engaging in the interactive process with disabled Police Officers and offering them a position within their work restrictions. We are surprised that the POA would oppose the City engaging in the interactive process with disabled Police Officers (which is required by state law as well as the ADA) and then offering them another position within the City, especially since the Officers retain final decision of whether to accept the job.

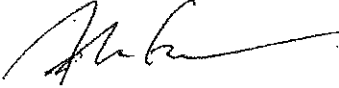
We do not believe that simply offering a disabled Police Officer another position is a mandatory subject of bargaining. This is part of engaging in the interactive process- the difference here is that the City will guarantee an offer of a job. The Police Officer is not required to take that job under Municipal Code Section 3.04.490.

We do want to clarify that the City is also willing to pay that Police Officer who has accepted the City's offer of another job at the same rate they were making as a Police Officer (Y-Rating). However, this has not been implemented as we do believe this would be subject to meet and confer and that is why the City notified the POA on April 21, 2014, of its interest in meeting to discuss this further. The Y-rating ordinance is not currently in effect.

Given that the POA clearly is opposed to the offering of a job and has filed a Step 3 grievance in order to prevent the City from engaging in the interactive process with disabled Police Officers, we are agreeable to holding a Step 3 grievance hearing, while maintaining our position that the offering of a position is not a mandatory subject of bargaining and therefore is not grievable.

Please let us know the POA's availability for the Step 3 grievance hearing.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alex Gurza', written over a horizontal line.

Alex Gurza
Deputy City Manager

c: Jennifer Schembri, Deputy Director of Employee Relations
Jim Unland, POA President
John Robb, POA Vice President
Franco Vado, POA Chief Financial Officer